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SOCIAL, HUMANITARIAN AND HUMAN RIGHTS QUESTIONS:
HUMAN RIGHTS QUESTIONS

Suppression of the traffic in persons and of the exploitation of the prostitution of others

Report of the Secretary-General

SUMMARY

The Economic and Social Council, in resolution 1983/30 on the suppression of the traffic in persons and of the exploitation of the prostitution of others, made a number of recommendations to Member States on that subject. Among the recommendations were the ratification of international instruments and the adoption of measures aimed at preventing prostitution, increasing the number of women in the State's personnel having direct contact with the populations concerned, eliminating discrimination against prostitutes and facilitating their reabsorption into society, curbing the pornography industry and punishing all forms of procuring. Requests regarding those issues were also made to organs and organizations of the United Nations system. At the Council's request, the Secretary-General reported on the implementation of resolution 1983/30 to the Council at its first regular session of 1985 (E/1985/46), first regular session of 1990 (E/1990/33), first regular session of 1991 (E/1991/18) and substantive sessions of 1992 (E/1992/49 and Add.1 and 2) and 1993 (E/1993/61 and Add.1).

The Council, in resolution 1993/48 requested the Secretary-General to submit a further report to it in 1994, on the steps taken to implement the recommendations contained in Council resolution 1983/30 by those member States, United Nations organizations and other intergovernmental organizations that had not yet submitted such information. The present document contains information submitted pursuant to that request.

* E/1994/100.

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INTRODUCTION

1. In paragraph 3 of its resolution 1993/48 on the suppression of the traffic in persons, the Economic and Social Council requested the Secretary-General to submit a further report to the Council in 1994, on the steps taken to implement the recommendations contained in Council resolution 1983/30 by those Member States, United Nations organizations and other intergovernmental organizations that had not yet submitted such information.

2. In paragraph 4, the Council also requested the Secretary-General to continue to include in that report, or to make available to the Council in some way, information on activities of the supervisory bodies of the International Labour Organization regarding the implementation of provisions and standards designed to ensure the protection of children and other persons exposed to contemporary forms of slavery.

3. In paragraph 6, the Secretary-General was further requested to include in that report information on any operational activities of the United Nations system that could foster the implementation of standards designed to ensure the protection of children and other persons exposed to contemporary forms of slavery and activities that might be geared to the prevention of violations and alleviation of the plight, or rehabilitation of victims.

4. Pursuant to that resolution, the Secretary-General, on 11 April 1994, addressed requests to Governments, United Nations organs, specialized agencies and intergovernmental organizations concerned for information on the steps taken to implement the recommendations in Council resolutions 1983/30 and 1993/48.

5. By 1 June 1994, replies had been received from the following States: Cyprus and Estonia.

6. Replies were also received from the Committee on the Elimination of Discrimination Against Women (CEDAW), the Crime Prevention and Criminal Justice Branch and the Division for the Advancement of Women of the United Nations Secretariat, the International Organization for Migration and the League of Arab States. The Department of Humanitarian Affairs of the United Nations Secretariat, the United Nations Development Programme and the Organization of American States indicated that they had no information to submit on the matter.

7. The present report has been prepared pursuant to paragraphs 3, 4 and 6 of Council resolution 1993/48 and contains a summary of the substantive replies received.

8. The Secretary-General deems it appropriate to refer also to his previous reports on the implementation of Economic and Social Council resolution 1983/30 (documents E/1985/46, E/1990/33, E/1991/18, E/1992/49 and Add.1-2 and E/1993/61 and Add.1), which were submitted to the Council at its first regular sessions of 1985, 1990 and 1991 and at its substantive sessions of 1992 and 1993. As indicated in those reports, a number of countries (Argentina, Austria, Barbados, Belgium, Brunei Darussalam, Burkina Faso, Chad, Chile, China, Colombia, Cuba, former Czechoslovakia, Dominica, the Dominican Republic, Greece, El Salvador,

Finland, Gabon, Germany (former Federal Republic of), Guinea, Iraq, Jordan, Latvia, Madagascar, Mexico, the Netherlands, Norway, Pakistan, Poland, Portugal, Qatar, Rwanda, Saint Vincent and the Grenadines, San Marino, South Africa, Suriname, Tunisia and former Yugoslavia) had submitted information in connection with Council resolution 1983/30. Substantive replies on the subject had also been received from the Department of Public Information and the Division for the Advancement of Women of the United Nations Secretariat, the Economic Commission for Africa, the Economic and Social Commission for Asia and the Pacific, the Economic Commission for Latin America and the Caribbean, the Centre for Social Development and Humanitarian Affairs of the United Nations Office at Vienna, the United Nations Children's Fund, the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Educational, Scientific and Cultural Organization, the International Labour Organization, the World Health Organization, the United Nations Interregional Crime and Justice Research Institute, the Commission of the European Communities, the Council of Europe, the European Parliament, the Organization of American States, the World Tourism Organization and Interpol. The information contained in those replies was transmitted to the Working Group on Contemporary Forms of Slavery of the Subcommission on Prevention of Discrimination and Protection of Minorities for consideration at its tenth, eleventh, fifteenth, sixteenth, seventeenth, eighteenth and nineteenth sessions.

9. Any additional replies will be issued as addenda to the present report.

I. INFORMATION RECEIVED FROM STATES

A. Cyprus

[Original: English]

[10 August 1993]

General comments

1. Under the Aliens and Immigration Laws Cap 105 and the relevant regulations made under those laws, all aliens residing in the Republic of Cyprus enjoy equal treatment without any discrimination as to sex, colour, race, religion or nationality. Furthermore, all aliens working in Cyprus are employed under the same conditions as the locals and share their high standard of living.

2. Under paragraph 6 (1) (e) of the Aliens and Immigration Laws, any alien who is a prostitute or who is living on the proceeds of prostitution is a prohibited immigrant.

3. The Migration Department of the Ministry of the Interior and the Aliens and Immigration Branch of the Police, which are the appropriate authorities for the grant of residence permits and the control of aliens respectively, are taking all necessary measures so that aliens in Cyprus, particularly women, are not exploited sexually or in any other way.

Steps taken to implement the recommendations contained in resolution 1983/30

4. Paragraph 1. The Government of Cyprus has ratified the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others in its Law No. 57/83.

5. Paragraph 3 (c). The elimination of discrimination against women is an integral part of government policy, especially since 1985, when the Government of Cyprus ratified the Convention on the Elimination of All Forms of Discrimination Against Women in its Law No. 78/851, which since then has provided the general framework for government policy in the field of women's issues.

6. In order to pursue the implementation of the provisions of the Convention various legal and other measures have been promoted, including:

(a) The reform and modernization of Family Law with a view to inter alia, incorporating the principle of equality between women and men in that field of law and bringing domestic law into line with the provisions of relevant international conventions;

(b) The enactment of the Laws on the Protection of Maternity (Law No. 54/87) and on Equal Pay for Work of Equal Value (Law No. 158/89);

(c) The establishment of national women's machinery (the Permanent Central Agency for Women's Rights) to promote, coordinate and monitor the implementation of programmes and activities aiming at eliminating de jure and de facto discrimination against women;

(d) The launching of information and sensitization campaigns for equality between women and men aimed at changing the overall mentality of people and eliminating prejudices against women.

7. All measures and policies that aim to improve the socio-economic status of women contribute at the same time to the prevention of prostitution by helping women to become independent and therefore resistant to the various forms of exploitation, including prostitution.

8. Paragraph 3 (f). In Cyprus, vocational and training programmes specially designed for women have been introduced, including special basic skills training covering the existing needs of local industry, sponsored mainly by the Industrial Training Authority, and programmes encouraging older women to enter or re-enter economic activity. Those programmes have not been designed especially for persons rescued from prostitution but are open to all interested women.

B. Estonia

[Original: English]

[16 May 1994]

1. In paragraph 1 of its resolution 1983/30, the Council called upon member States to sign, ratify and implement the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. To date, Estonia is not a party to that Convention.

2. In paragraph 2, the Council invited member States to sign, ratify and implement the International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications as amended by a Protocol. Estonia acceded to that Convention, on 10 March 1936.

3. In paragraph 3 (d), the Council urged States to curb the pornography industry and the trade in pornography and to impose severe penalties where minors are involved. According to article 200 of the Criminal Code of Estonia, it is a crime to distribute and display publications that are pornographic in their content or that propagate violence and cruelty among minors, or to make them accessible to minors in any other way; the crime is punishable by a fine, arrest or imprisonment for up to two years.

4. In paragraph 3 (e), the Council urged States to punish all forms of procuring. According to article 202 of the Criminal Code, it is a crime to entice minors to crime or prostitution. It is a crime to entice a minor to prostitution or to exploit the prostitution of a minor; the crime is punishable by a fine, arrest or imprisonment for up to five years.

II. INFORMATION SUBMITTED BY UNITED NATIONS BODIES AND INTERGOVERNMENTAL ORGANIZATIONS

A. Committee on the Elimination of Discrimination Against Women

[Original: English/Spanish]

[22 May 1994]

1. With respect to the traffic in women and exploitation of prostitution, which States parties commit themselves, in article 6 of the Convention on the Elimination of All Forms of Discrimination against Women, to take all appropriate measures, including legislation, to suppress, particular importance should be attached to the repeated proposals put forward by the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) concerning the dissemination of the provisions of the Convention, to the recommendations of CEDAW, especially No. 19, and to the reports of States parties. No article of the Convention, in particular article 6, can be effectively applied without taking into account all the others; as a result, it is essential to the elimination of the exploitation of women for prostitution and the traffic in

women that the entire United Nations system contribute to the dissemination and application of the provisions of the Convention on the Elimination of All Forms of Discrimination against Women and the recommendations of CEDAW.

Violence and traffic in women

2. The information provided by States parties regarding the application of article 6 of the Convention has served as a basis for the inclusion of a specific commentary on this article in CEDAW recommendation No. 19. The Committee feels that traffic in women and the exploitation of women for prostitution are acts of violence against them and that such traffic and exploitation make women especially vulnerable to other forms of violence.

3. The text of this commentary reads as follows:

"Article 6

"13. States parties are required by article 6 to take measures to suppress all forms of traffic in women and exploitation of the prostitution of women.

"14. Poverty and unemployment increase opportunities for trafficking in women. In addition to established forms of trafficking there are new forms of sexual exploitation, such as sex tourism, the recruitment of domestic labour from developing countries to work in developed countries and organized marriages between women from developing countries and foreign nationals. These practices are incompatible with the equal enjoyment of rights by women and with respect for their rights and dignity. They put women at special risk of violence and abuse.

"15. Poverty and unemployment force many women, including young girls, into prostitution. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them. They need the equal protection of laws against rape and other forms of violence.

"16. Wars, armed conflicts and the occupation of territories often lead to increased prostitution, trafficking in women and sexual assault of women, which require specific protective and punitive measures" (A/47/38, chap. I).

4. Among the concrete recommendations of CEDAW to States parties, all of which are useful for the elimination of violence against women in any form, two are specifically related to the exploitation of women for prostitution and the traffic in women:

"(g) Specific preventive and punitive measures are necessary to overcome trafficking and sexual exploitation;

"(h) States parties in their reports should describe the extent of all these problems and the measures, including penal provisions and preventive and rehabilitation measures, that have been taken to protect

women engaged in prostitution or subject to trafficking and other forms of sexual exploitation. The effectiveness of these measures should also be described" (A/47/38, chap. I, para. 24).

5. The Committee feels that it is very important for States parties to provide information not only on the prevailing legislation in each country, but also on the effectiveness of such legislation. To this end, States parties should provide, as far as possible, quantitative and qualitative information on individuals who practise trafficking in women and exploit them for prostitution, and also on their victims.

6. At its most recent session, the Committee also expressed the view that CEDAW recommendation No. 19 on violence against women should be taken into account in the mandate and activities of the Special Rapporteur on violence against women to be designated by the Commission on Human Rights.

Optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women

7. At its most recent session, the Committee also adopted suggestion No. 5, which proposes that the Commission on the Status of Women request the Secretary-General of the United Nations to convene an expert group meeting to prepare a draft optional protocol to the Convention, as recommended by the World Conference on Human Rights. The expert group meeting would consider the contents of such a protocol, which should take into account, in particular, article 6 of the Convention, since it is clear from the reports submitted by the States parties to the Convention that, despite legal prohibition, the traffic in women and the exploitation of women for prostitution exist throughout the world. Women victims of such traffic and exploitation form one of the groups most vulnerable to the violation of human rights at both the national and the international level.

Poverty, development and the traffic in women

8. Finally, in view of the interrelationship of poverty, the traffic in women and the exploitation of women for prostitution, it is important to bear in mind CEDAW suggestion No. 6, concerning women's contribution to the International Conference on Population and Development:

"Suggestion 6. International Conference on Population and Development

"The Committee on the Elimination of Discrimination against Women,

"Bearing in mind that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

"Recalling that the Convention on the Elimination of All Forms of Discrimination against Women states that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

"Recalling also that the International Conference on Population and Development, to be held at Cairo from 5 to 13 September 1994, is being held at a time when profound political, economic, social and cultural changes are taking place and when it is being recognized that the role of both men and women is the central force in sustainable development, that women constitute the majority of the world population and that the interdependence of their status with economic growth, the elimination of poverty, sustainable development and population issues,

"Noting that in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, held at Vienna from 14 to 25 June 1993, it is stated that the human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights and that the full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community, 5/

"1. Reiterates the provisions of the Convention on the Elimination of All Forms of Discrimination against Women bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children;

"2. Further reiterates that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole;

"3. Reaffirms that women should have, on the basis of equality, the same rights as men to decide freely and responsibly on the number and spacing of their children and to have access to complete information on alternative forms of safe family planning methods and services, including education and means to enable them to exercise these rights;

"4. Notes that there is a vicious cycle of women's illiteracy, poverty, high fertility rates and discrimination in formal and informal employment, as well as an interrelation of these issues with population and development issues, and that due attention must therefore be given to this interdependence in any population and development policies as well as to allowing women equal participation in the relevant governmental and non-governmental decision-making processes;

"5. Reaffirms the objective of the International Conference on Population and Development to raise the quality of life for all people, notably through the guarantee of human rights, the alleviation of poverty, the creation of employment in the formal sector and protection and access to social benefits of women working in the informal sector and the improvement of health, education, nutrition and housing, and considers that, as women are generally the poorest of the poor, eliminating social, cultural, economic and political discrimination against women is a

prerequisite for attaining the human rights of women and for enhancing the quality of life of the people, as well as reducing poverty, promoting economic growth and achieving sound population policies;

"6. Recognizes that, in view of the increase in the number of female-headed households who are among the poorest sectors of the population, special measures should be carried out to provide for the special needs of female-headed families and that due attention should be paid to them in all aspects of population and development;

"7. Strongly emphasizes that one of the main objectives of the Conference is to eliminate discrimination against the girl child and increase public awareness of her value as a human being, both before and after her birth; to eliminate the root causes of preferences for sons; to strengthen the girl child's self-image and self-esteem and improve the status of the girl child, especially with regard to health, nutrition and education, and to raise the minimum age of marriage of girls to 18;

"8. Takes note of the economic contribution of women's domestic work and other non-remunerated work, as well as the product of their functions in the informal sector, and considers that due attention should be paid to the recognition of the value of that work in research and in calculating gross national product, which forms the basis of development and population policies and programmes, and to the necessity of eliminating all discriminatory practices impeding women's work in those areas when formulating development and population policies;

"9. Recommends that, in the formulation of sustainable development policies, particularly for poor rural and urban areas, the needs and tasks of women, and their impact on natural resources, should be recognized and that women should participate in governmental and non-governmental decision-making processes on these issues on equal terms with men;

"10. Notes that the severe economic situation facing many nations, both developed and developing, as well as structural adjustment programmes and the concomitant reduction in social programmes, have serious implications for the people;

"11. Also notes that those implications occur particularly at the grass-roots level, where women who comprise the majority suffer disproportionately from the transition and adjustment periods;

"12. Calls for appropriate measures to be carried out by Governments and international organizations and financial institutions to alleviate the burden imposed in the life of men and women and their families in this respect." (A/49/38, chap. IB)

B. Crime Prevention and Criminal Justice Branch

[Original: English]

[16 May 1994]

1. A draft resolution was recommended by the Commission on Crime Prevention and Criminal Justice at its third session for adoption by the Economic and Social Council, namely resolution III, entitled "Criminal justice action to combat the organized smuggling of illegal migrants across national boundaries". The Commission also adopted resolution 3/1, entitled "Violence against women and children", and 3/2, entitled "International traffic in minors".

2. A workshop on the prevention and control of domestic violence in central and eastern European countries was held in Budapest from 8 to 9 April 1994. The event was organized jointly by the European Institute for Crime Prevention and Control, which is affiliated with the United Nations, and the Ministry of Justice of Hungary.

3. Strategies for Confronting Domestic Violence: A Resource Manual, prepared with the generous support of the Government of Canada, will shortly be issued as a United Nations publication.

C. Division for the Advancement of Women

[Original: English]

[23 May 1994]

1. In connection with paragraph 6 of Economic and Social Council resolution 1993/48, the Division for the Advancement of Women of the United Nations Secretariat, referred to the action taken by the Commission on the Status of Women, in particular Commission resolution 38/3, entitled "Elimination of violence against women", and 38/7, entitled "Violence against women migrant workers". (E/1994/27, chap. IC)

D. International Organization for Migration

[Original: English]

[30 April 1994]

1. During the past year, activities undertaken by the International Organization for Migration (IOM) to combat the traffic in persons have expanded dramatically. Given the IOM mandate, migrants are the focus of its anti-trafficking efforts, some of which are described below.

2. Voluntary return programmes. IOM has organized on an ad hoc basis the voluntary return home of several groups of trafficked migrants who, after detention by authorities as clandestine entrants, opted to return home. IOM is

currently in the process of refining and funding an ongoing project to organize the voluntary return of funding an ongoing project to organize the voluntary return of trafficked migrants from transit and destination countries, they may be stranded, detained or otherwise in distress.

3. Conferences. In July 1993, IOM organized an informal exchange of views on migrant trafficking at which countries of origin, transit and destination were represented, along with IOM and UNHCR. Discussion focused on the nature of migrant trafficking and on new and existing policies to combat those flows. At the moment, IOM is organizing its Eleventh Seminar on Migration, to be held 26-28 October in Geneva, on the theme "International response to trafficking in migrants and safeguarding of migrant rights". Three aspects of migrant trafficking are particularly troubling to the governments concerned: (a) the associated violations of human rights and dignity; (b) the social and economic implications of disorderly immigration; and (c) linkages to organized crime. The seminar aims to broaden and deepen understanding of those issues and to make recommendations for practical cooperation among States to more effectively combat migrant trafficking.

4. Information dissemination. IOM has begun publishing a quarterly bulletin, Trafficking in Migrants, which compiles news on migrant trafficking from the media, Governments and intergovernmental and non-governmental organizations. The bulletin serves as a forum in which information on incidents, trends and policies can be exchanged and publicized.

E. League of Arab States

[Original: Arabic]

[18 May 1994]

We should like to inform you that the subject of "suppression of the traffic in persons" has been dealt with by our Arab States in their national legislations, since the majority of these are derived from the Islamic Shariah which forbids traffic in persons and calls for the elimination of this phenomenon for the punishment of the perpetrators.

The General Secretariat of the League of Arab States (Department of Legal Affairs) considers that the best method of combating this crime is to lay down legislation prohibiting traffic in persons and the exploitation of the prostitution of others and to promote awareness of the atrocity of traffic in persons and its evil consequences through education and the information media.

Mechanisms should be put in place to prohibit and punish such actions.

States shall be urged to act promptly to implement resolution 1994/48 referred to above as soon as possible because of its importance in eliminating the phenomenon of traffic in persons.

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Suppression of the traffic in persons and of the exploitation of the prostitution of others

Report of the Secretary-General

Addendum

The present document contains information submitted by the Government of Kuwait, the Office of the United Nations High Commissioner for Refugees and the United Nations Educational, Scientific and Cultural Organization, which was received after the preparation of document E/1994/76.

Kuwait

[Original: Arabic]

[30 May 1994]

1. With regard to paragraph 1 of Economic and Social Council resolution 1983/30, in which the Council invited Member States to sign or ratify the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Kuwait acceded to that Convention on 1 July 1968. Kuwait has also acceded to two other international conventions dealing with similar matters:

(a) The Slavery Convention of 1926 (date of accession 27 April 1963);

(b) The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (date of accession 8 January 1963).

2. Kuwait has ratified the following three international labour conventions containing provisions that prohibit forced labour and discriminatory treatment with regard to employment:

(a) The Forced Labour Convention No. 29 of 1930;

(b) The Abolition of Forced Labour Convention No. 105 of 1957;

(c) The Discrimination (Employment and Occupation) Convention No. 111 of 1958.

3. Pursuant to the provisions of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the competent Kuwaiti authorities (Customs and Ports Administration) issued Ordinance No. 1/63, prohibiting the transport or attempted transport of slaves, as well as other acts that are incompatible with the provisions of the Convention. 1/

4. With regard to paragraph 3 of the resolution, such practices, which do not exist in its territory, are strongly condemned by Kuwait in view of the fact that the traffic in persons and the exploitation of the prostitution of others constitute a contemporary form of slavery that is incompatible with the most basic human rights, as well as human dignity and values. It is also incompatible with the provisions of the Islamic Shariah, which advocates virtue and prohibits illicit practices and relations, as well as slavery. Moreover, such acts are contrary to public order and public morals. Accordingly, with regard to the Council recommendation that Member States punish all forms of procuring, it should be noted that the Kuwaiti Constitution and the legislation supplementing it contain a number of provisions that prohibit such acts and, at the same time, ensure that they do not occur. Those provisions are outlined in the following paragraphs.

5. Constitutional provisions:

(a) Article 9 stipulates that: "The family, based on religion, morality and patriotism, is the cornerstone of society. The law shall preserve the integrity of the family, strengthen its ties and protect mothers and children within its framework";

(b) Article 10 stipulates that: "The State shall care for the welfare of young persons, whom it shall protect from exploitation and from moral, physical and spiritual neglect";

(c) Article 29 stipulates that: "All persons are equal in regard to their human dignity. In the eyes of the law, they are equal in regard to their public rights and obligations, without any discrimination among them on the grounds of sex, origin, language or religion";

(d) Article 31 stipulates that: "No one shall be arrested, detained, searched or compelled to reside in a specified place, nor shall any person be restricted in his freedom of residence or movement, except as prescribed by law. No one shall be subjected to torture or to degrading treatment". In keeping

with those provisions, all the State's educational, social and informational institutions show concern for the family and the younger generation by protecting and safeguarding them from any exploitation or delinquency through moral and patriotic upbringing and education.

6. In addition to the constitutional provisions, the Penal Code (promulgated in Act No. 6 of 1960) contains a number of legal provisions that prohibit prostitution and the traffic in persons. Article 185 prescribes a penalty of imprisonment and a fine for anyone who traffics in slaves. Articles 200 to 204 regard procuring for the purposes of debauchery and prostitution as acts legally punishable by imprisonment and a fine. 2/

7. With regard to the Council recommendation that Member States should increase the number of women among the State's personnel, it should be noted that the female members of Kuwaiti society enjoy full equality with men in regard to their constitutionally recognized rights, including the right to work. In fact, article 41 of the Constitution stipulates that: "Every Kuwaiti has the right to work and to choose the type of such work".

8. Various employment opportunities are freely available to Kuwaiti women and, according to the statistics, Kuwaiti women constitute about 30 per cent of the Kuwaiti labour force.

9. It is noteworthy that Kuwaiti women hold several senior posts in the Civil Service. Those appointments include the first female Kuwaiti ambassador, the first female university rector (who is also the first woman to hold such a post in the Arab World), the first female deputy minister (at the Ministry of Higher Education), and female under-secretaries at a number of Kuwaiti ministries.

10. With regard to the Council recommendation concerning the curbing of the pornography industry, it should be noted that, under the Kuwaiti legislation in force it is prohibited to import or trade in any commercial goods that are incompatible with public order or public morals and the import of which is banned by Kuwaiti law. The competent State authorities exercise strict control over all goods and ban and confiscate any that offend the public sense of decency. The State also punishes the persons responsible for such offences.

11. With regard to paragraph 4 of Council resolution 1983/30, in which the Council invited Member States to cooperate closely with each other in the search for missing persons and in the identification of international networks of procurers, Kuwait definitely supports any international endeavours to eliminate such practices. It is also willing to cooperate with any international bodies with a view to putting an end to the traffic in persons.

Office of the United Nations High Commissioner for Refugees

[Original: English]

[2 June 1994]

1. Currently, there are approximately 10 million refugee children, who make up more than half the world's refugee population. Within the ambit of its mandate, the Office of the United Nations High Commissioner for Refugees (UNHCR) has taken a special interest in the plight of children who need special protection in view of their vulnerability to human rights abuses, including those referred to in Council resolutions 1983/30 and 1993/48. Refugee women are also particularly exposed to those abuses. It is recognized that women and children comprise approximately 80 per cent of most refugee populations. The Office has been involved in a number of activities in relation to the protection of refugee women and refugee children related to the issues covered in the above-mentioned resolutions.

2. The mandate of UNHCR is to provide international protection to refugees and to seek durable solutions for the problems of refugees. Sexual violence in its various forms poses significant problems for the protection of refugees in their country of origin, during flight and in the country of asylum. UNHCR has brought the myriad problems of physical security and sexual violence, including the abuses referred to in resolution 1983/30, to the attention of its representatives on numerous occasions through a variety of initiatives, as outlined below.

3. The Executive Committee of the High Commissioner's Programme has devoted increasing attention to those problems in recent years with the aim of ensuring that the planning of protection and assistance activities for refugees addresses the specific needs of women and children. In particular, it has adopted a number of specific conclusions on the protection of refugee women and refugee children:

1985 No. 39 (XXXVI)	Refugee women and international protection
1987 No. 47 (XXXVIII)	Refugee children
1988 No. 54 (XXXIX)	Refugee women
1989 No. 59 (XL)	Refugee children
1989 No. 60 (XL)	Refugee women
1990 No. 64 (XLI)	Refugee women and international protection

Those conclusions have been brought to the attention of UNHCR representatives and staff members in the field and at headquarters, and help form the basis of our day-to-day protection work.

4. The above conclusions on refugee women note in particular the problems that women face in the area of physical security and sexual exploitation. In addition, in 1990 UNHCR introduced its Policy on Refugee Women and in July 1991 the Office published "Guidelines on the protection of refugee women" (A/AC.96/EC/SCP/67), which cover the issue of physical security, including sexual exploitation and prostitution.

5. In relation to refugee children, the Office has taken several steps with a view to preventing their physical and sexual abuse. Notably, in August 1988 UNHCR issued "Guidelines on refugee children" (UNST/HCR(092.1)/G8), which contain the policies guiding UNHCR's actions in those areas and indicate concrete steps that can be taken to ensure that the needs of refugee children are met. Those guidelines have recently been revised, including incorporation of the principles expounded in the Convention on the Rights of the Child. In particular, there is a chapter devoted to "Personal liberty and security" which, inter alia, promotes remedial assistance for the recovery of victims of abuse and exploitation. In 1993, UNHCR introduced its Policy on Refugee Children, which includes the above conclusions on children and highlights the right of the child to personal security. It also outlines the objectives of UNHCR work, which include the protection of refugee children at risk from detention, armed conflict, military recruitment, sexual assault or abuse, prostitution, torture, hazardous working conditions or any other form of violence, abuse or neglect.

6. In April 1994, UNHCR participated in a Working Group of the Hague Conference on Private International Law on the application of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption to refugees and other internationally displaced children. UNHCR's particular concern is to discourage the unregulated adoption of refugee children. UNHCR will actively participate in future meetings on that issue.

7. The policy and guidelines on the protection of refugee women and refugee children are widely disseminated, including to UNHCR staff in the field, government officials of host countries and the staff of non-governmental organizations.

8. More recently, partly in response to the distressing situation of women in several regions, special focus has been placed by the Office on the problem of sexual violence in the refugee context. To that end, UNHCR has taken a large number of initiatives to improve the observance of the human rights of refugee women. In May 1993, UNHCR presented to the Executive Committee's Sub-Committee of the Whole on International Protection a note on certain aspects of sexual violence against refugee women (A/AC.96/822) and a paper on the personal security of refugees (EC/1993/SCP/CRP.3). In response, at its forty-fourth session the Executive Committee adopted conclusion No. 72 (XLIV) entitled "Personal security of refugees" and Conclusion No. 73 (XLIV) entitled "Refugee protection and sexual violence". Conclusion No. 73 is an action-oriented conclusion that calls for concrete measures to prevent and remedy the problem. 3/

9. Moreover, UNHCR is currently finalizing guidelines on the evaluation and care of victims of trauma and violence, and is developing guidelines on the prevention of and response to sexual violence against refugees for use in the field. Those guidelines will be shared with host Governments and implementing partners, in addition to UNHCR field offices.

10. In relation to operational activities, UNHCR deploys protection officers to all field locations who, along with the other UNHCR staff members, are responsible for the implementation of the policies and guidelines on refugee women and refugee children. UNHCR makes a special effort to ensure the

deployment of female protection officers in areas where female refugees experience particularly grave protection problems.

11. Since 1989, people-oriented planning training has been introduced to UNHCR. Through the use of case studies, that training focuses special attention both on the role and needs of women, promoting gender awareness in the provision of protection and assistance to refugees, and on specific needs in relation to children. It places special emphasis on issues in relation to the physical security of refugee women and refugee children. To date, over 750 staff from UNHCR and non-governmental organizations, government officials and Executive Committee members have received training. Training materials have been translated into various languages, including most recently Russian, in response to requests from our field offices.

12. In 1993, UNHCR launched the Women Victims of Violence Project in Kenya, which is specifically tailored to provide preventive measures against violence and sexual exploitation and to grant assistance to female refugees, including young girls, who have been exposed to human rights abuses, including physical abuse, abduction and sexual abuse. At a later stage, a thorough review of the Project will be conducted by UNHCR and the lessons learned will be incorporated into its operational activities in other countries where women are at high risk of physical abuse.

United Nations Educational, Scientific and Cultural Organization

[Original: French]

[31 May 1994]

1. For many years now, the United Nations Educational, Scientific and Cultural Organization, with the active participation of its member States, intergovernmental international organizations and non-governmental organizations, has been taking action to combat violence against girls and women - especially in urban areas - prostitution and sexual mutilation. Problems arising from offences against the dignity of women are becoming increasingly acute as a result of the spread of poverty in the world. UNESCO has expanded its activities during the biennium, laying the foundations for an international network and providing for the elaboration of new international norms.

2. UNESCO provided support for an exhibition organized by the city of Lille (France) on the theme of prostitution. The fact that many of the young people interviewed during that exhibition no longer consider prostitution as inevitable and believe that it can be eradicated is an encouraging sign that an evolution of the norms in this area is possible.

3. A working group, which met on 9 and 10 April 1991 at Penn State University (United States), set out to analyse the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others and to propose ways of making its implementation and monitoring more effective.

After reviewing the causes of prostitution, the experts concluded that new international norms should be adopted in this area. Its report, entitled "Penn State Report" and published in English and French, was widely disseminated and gave rise, inter alia, to a debate in the Council of Europe. Following the publication of this report, and on the basis of a request addressed by the United Nations Working Group on Contemporary Forms of Slavery, another working group met in New York to elaborate new international norms. In addition to UNESCO, participants in the latter group included representatives of universities and non-governmental organizations, including the "Coalition against Trafficking in Women". The proceedings of the group were presented at a lecture given to non-governmental-organizations "Women's Group" at United Nations Headquarters. This group has shown a keen interest in the activities of UNESCO.

4. On the occasion of International Women's Day, an International Conference on the Sex Trade and Human Rights was held in Brussels on 6 March 1993. Organized by UNESCO, the Communauté française de Belgique, the International Federation of Human Rights and the International Council of Women, it attracted very considerable attention. In order to contend with a traffic in persons which has reached proportions and is conducted by methods that are little short of barbarous, participants urged that the international instruments designed to combat it should be strengthened. A campaign to collect signatures was launched in order to support the proposal for a new Convention against the exploitation of human beings which might be presented at the fourth World Conference on Women, to be held in 1995 in Beijing.

5. In addition, as part of the preparations for the fourth World Conference on Women, a working group comprising the member States of UNESCO and interested non-governmental organizations will meet at UNESCO in 1994 to examine ways of strengthening, at the international level, efforts to combat the traffic in persons and the sexual exploitation of persons, particularly through the proposal to strengthen existing norms (the 1949 Convention) and the proposal to introduce new norms in this field.

6. At the invitation of the National Commission of Korea, UNESCO will also organize, in October 1994, a meeting of experts on violence and on the suppression of the traffic in and prostitution of persons. The results of this meeting will be presented to the fourth World Conference on Women and to the non-governmental-organizations Forum.

Notes

1/ The text of the Ordinance is available for consultation in the files of the Secretariat.

2/ The text of the above-mentioned articles is available for consultation in the files of the Secretariat.

3/ The texts of the conclusions are available for consultation in the files of the Secretariat.

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SOCIAL, HUMANITARIAN AND HUMAN RIGHTS QUESTIONS: SPECIAL ECONOMIC, HUMANITARIAN AND DISASTER RELIEF ASSISTANCE

Letter dated 10 June 1994 from the Permanent Representative of Tajikistan to the United Nations addressed to the Secretary-General

The Government of Tajikistan has requested me to convey its sincere gratitude for the selfless assistance provided by the United Nations system to the population of the Republic, which has been the victim of civil war and natural disasters.

At the same time, we would request that further consideration be given to our problems, which Tajikistan will simply not be able to overcome on its own.

As a result of the armed conflicts of 1992-1993, over 50,000 people were killed; over 350,000 people became refugees, including 150,000 who went to neighbouring countries; and 300,000 people were left homeless. According to estimates by the expert mission of the World Bank, the overall costs of carrying out an emergency programme to rebuild the structures destroyed during the armed conflicts and natural disasters of 1992-1993 amount to US$ 116.4 million, not counting the costs involved in remedying the consequences of the natural disasters of 1994.

Disastrous floods struck Tajikistan in May 1992 and May 1993, and there were heavy snowfalls from the end of March to the beginning of June 1994. Bridges were destroyed, roads were cut off, electricity and communications were severed, irrigation systems were put out of operation and cultivated land along river basins was flooded. Schools and health facilities were damaged.

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* E/1994/100.

Some 23,600 families suffered from the destruction caused by the civil war. About 35,000 homes were destroyed. In the regions that were hit by floods, about 35,000 people were left homeless and 25,000 were resettled from damaged homes.

The floods destroyed 1,800 homes and seriously damaged 8,300 others. In all, about 39,000 dwellings were damaged.

The floods damaged the lands along the Yak-Su and Kyzyl-Su rivers, where dikes extending for 100 kilometres were destroyed. About 100 bridges were damaged and over 1,000 homes were destroyed. Irrigation systems over an area of 39,000 hectares were destroyed. The damage to the Yak-Su river system is estimated at approximately US$ 70 million and the damage to the Kyzyl-Su river system at US$ 20 million.

Significant damage was caused to 96 school buildings, of which 17 (serving 20,000 students) were totally destroyed, and 50 schools were looted during the disorders. A further 25 schools were damaged during the natural disasters. Those losses exceed US$ 75 million.

Of 74 vocational and technical institutes, 45 suffered losses of equipment and teaching materials. The overall damage to the vocational education system exceeds US$ 25 million. At least US$ 10 million will be needed over the next few years to rebuild the system of education and vocational and technical training and restore their facilities.

As a result of the war, 61 medical establishments in the south of the country were destroyed and floods wrecked a further 20 medical establishments. Large quantities of medicines, equipment and vehicles were looted and destroyed, and child immunization programmes were halted.

During the civil war, the Dushanbe thermal electric power station suffered significant damage, and the building site of the Rogun hydroelectric power station was seriously damaged by the 1993 flood. The structures at the Sangtud hydroelectric power station were also flooded. There was considerable damage to approach roads, canals and surface protection structures.

In order to restore normal operation at two electric power stations - the Nurek and Baipaz power stations - components need to be acquired for the sluice, turbine and instrument operations, as well as storage batteries and lubricating and dielectric oils. The total cost of the programme for restoring the electric power sector is estimated at US$ 17.7 million.

The total damage to the communications sector is estimated at approximately US$ 10 million.

As a result of the floods, about 600 kilometres of roads were damaged. During the civil war, 55 bridges were totally or partially destroyed and 418 road fixtures were destroyed or lost.

The approximate cost of restoration work in the agricultural and water management sectors is US$ 26 million.

In the area of health, there is a shortage of the most vital medicines, including vaccines (BCG and DTP), of raw materials and packaging for pharmaceutical factories, and of equipment and spare parts. The total cost of restoring the normal functioning of this sector is over US$ 8.5 million.

The programme for roads includes the rehabilitation and repair of 165 bridges and 592 kilometres of damaged roads. The cost of the work planned is US$ 22.7 million.

A priority goal is the restoration of housing. Today over 180,000 people are homeless. The estimated cost of the programme is US$ 15.7 million.

The overall costs of implementing the restoration programmes are estimated at US$ 116 million; taking into account the need to remedy the consequences of the natural disasters of 1994, they are estimated at about US$ 140 million.

I should be grateful if you would have this letter circulated as an official document of the Economic and Social Council at its substantive session of 1994 under item 5 (a).

(Signed) L. KAYUMOV
Ambassador
Permanent Representative

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E

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SOCIAL, HUMANITARIAN AND HUMAN RIGHTS QUESTIONS: REPORTS OF SUBSIDIARY BODIES, CONFERENCES AND RELATED QUESTIONS

Implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination

293rd report of the Committee on Freedom of Association of the International Labour Office

Note by the Secretary-General

1. In its resolution 1992/12 of 20 July 1992, entitled "Allegations regarding infringements of trade union rights in South Africa", the Economic and Social Council requested the Secretary-General to invite the Government of South Africa to report on the measures it had taken to give effect to the recommendations contained in the report of the Fact-finding and Conciliation Commission on Freedom of Association concerning South Africa (see E/1992/70) and to refer the reports of the Government of South Africa on that matter to the International Labour Office, with the request that the latter transmit to the Council its advice and comments stemming from examination of those reports. The Council also invited the International Labour Office to inform the Council of actions taken in that regard.

2. The Secretary-General has the honour to transmit to the Council the 293rd report of the Committee on Freedom of Association of the International Labour Office, which met at Geneva in March 1994.

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* E/1994/100.

INTERNATIONAL LABOUR OFFICE

Governing Body

GB.259/7/15
259th Session

Geneva, March 1994

Seventh item on the agenda

293RD REPORT OF THE COMMITTEE ON FREEDOM OF ASSOCIATION

Measures taken by the Government of the Republic of South Africa to implement the recommendations of the Fact-Finding and Conciliation Commission on Freedom of Association

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INTERNATIONAL LABOUR OFFICE

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293RD REPORT OF THE COMMITTEE ON FREEDOM OF ASSOCIATION

Measures taken by the Government of the Republic of South Africa to implement the recommendations of the Fact-Finding and Conciliation Commission on Freedom of Association

A. Introduction

1. The Committee on Freedom of Association, set up by the Governing Body at its 117th Session (November 1951), met at the International Labour Office, Geneva, on 17, 18 and 25 March 1994 under the chairmanship of Mr. Jean-Jacques Oechslin, former Chairman of the Governing Body.

2. A complaint concerning alleged infringements of trade union rights against the Government of South Africa was submitted by the Congress of South Africa Trade Unions (COSATU) to the Governing Body at its 240th Session in May-June 1988. In view of the fact that the Republic of South Africa ceased to be a Member of the International Labour Organization on 11 March 1966 but remained a Member of the United Nations, the matter was referred to the Economic and Social Council of the United Nations (ECOSOC), in accordance with the procedure established between the ILO and the United Nations in regard to complaints concerning violations of trade union rights against States which are not Members of the ILO but which are Members of the United Nations.

3. Following ECOSOC's request to the Government of the Republic of South Africa to give its consent to the complaint being referred to the Fact-Finding and Conciliation Commission on Freedom of Association of the ILO (hereinafter "the Fact-Finding and Conciliation Commission") and following the Government's consent to the referral of this complaint in February 1991, the Governing Body set up a panel of the Fact-Finding and Conciliation Commission to examine this case at its 250th Session (May-June 1991). The Commission issued a very detailed report [see Prelude to change: Industrial relations reform in South Africa: Report of the Fact-Finding and Conciliation Commission

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on Freedom of Association concerning the Republic of South Africa, Official Bulletin, Special Supplement, Vol. LXXV, 1992, Series B.] containing numerous recommendations relating to freedom of association and collective bargaining, which was then submitted to the Governing Body at its 253rd Session (May 1992) for transmission to ECOSOC.

4. At its July 1992 Substantive Session, ECOSOC adopted a resolution (No. 1992/12) on "Allegations regarding infringements of trade union rights" in which it requested the Secretary-General of the United Nations: to invite the Government to report on the measures which it had taken to give effect to the Fact-Finding and Conciliation Commission's recommendations; and to refer the Government's report to the ILO with the request that the ILO in turn report its advice and comments back to ECOSOC after examining the Government's report.

5. On 8 November 1993, the Government transmitted to the Secretary-General of the United Nations a report constituting its response to the recommendations of the Fact-Finding and Conciliation Commission. On 17 November 1993, the Secretary-General of the United Nations transmitted this report to the Director-General.

6. The Committee has examined the information contained in the Government's report as well as recently enacted legislation and submits for the approval of the Governing Body the conclusions it has reached concerning the measures taken to implement the Fact-Finding and Conciliation Commission's recommendations.

B. The Government's reply on measures taken to implement the recommendations of the Fact-Finding and Conciliation Commission on Freedom of Association concerning the Republic of South Africa

7. In its communication of 8 November 1993, the Government first of all refers generally to various factors which characterize and shape the contemporary South African labour market such as the high growth rate of the economically active population; the decrease in the number of employment opportunities in the formal sector since the beginning of the recession in 1989; high levels of unemployment related to a negative economic growth rate; current political developments and the situation of unrest in the country; the low levels of education of the South African population (a 1991 census data indicates that 56.4 per cent of the population may be considered as functionally illiterate), resulting in an excess demand for certain categories of skilled workers on the one hand, and an excess supply of unskilled workers, on the other hand; the low percentage of the overall expenditure of South African companies on the training and retraining of workers; and finally, low wage increases and productivity. The Government also mentions certain steps that have been taken and describes certain structures that have been created to address the various problems affecting the labour market.

8. The Government then describes more specifically, recent developments in labour issues and legislation in South Africa. First of all, it indicates that the National Manpower Commission (NMC) which remains an advisory body on labour policy for the Minister of Manpower has been restructured on a tripartite basis and is representative of employers' and workers' organizations and independent experts as well as the State. The first meeting of the restructured NMC was held on 12 February 1993 and until August 1993

this forum held five meetings. Moreover, the restructured NMC established three working groups and seven subcommitteess (whose names are enumerated by the Government) to further investigate specific issues. The Government indicates that the NMC is considering the simplification of the Labour Relations Act (LRA) and has published for comment, draft legislation to be considered by Parliament in November 1993. The more important amendments concern the simplification and clarification of procedures relating to the settlement of disputes and the deletion of the provisions regarding the prohibition on the political affiliation by trade unions as well as the prohibition on unions to grant directly or indirectly financial assistance to political parties.

9. Regarding labour legislation for farmworkers, the Government states that the Basic Conditions of Employment Act was extended to the agricultural sector on 1 May 1993. The question of the extension of the LRA to agriculture was referred to a working group in which the South African Agricultural Union (SAAU) and COSATU were represented. On 6 August 1993 SAAU and COSATU reached agreement on the issue concerning a single Act - the Agricultural Labour Act No.147 of 1993 - to be applicable to farmworkers. As far as labour legislation for domestic workers is concerned, a bill to extend the Basic Conditions of Employment Act to domestic workers was passed by Parliament during September 1993. In so far as legislation to regulate labour relations in the public sector is concerned, the Public Service Labour Relations Act came into effect on 2 August 1993.

10. The Government points out that the Department of Manpower has embarked on an investigation into the functioning of the Industrial Court system. A committee, consisting of representatives of the major users of the Court, has also been appointed to assist the Department in addressing certain problems in the functioning of the Court and streamlining its operations. Moreover, the Department has considered the problems arising from access to premises and other organizational rights of trade unions and is of the opinion that these matters should be discussed by the interested parties themselves. There is broad consensus, however, that reasonable rights to access and other reasonable organizational rights of unions should be protected. In the interim, any party involved in a dispute on any of these matters is at liberty to bring the matter to the attention of the Industrial Court.

11. The Government concludes by stating that it is aware of the labour standards as developed by the ILO, especially Conventions Nos. 87 and 98, and due cognizance will be taken thereof in the further development of labour legislation and manpower practices. It would be premature, however, at this stage to comment on how a future government would act with regard to possible readmission to the ILO or further ratification of ILO Conventions. The South African Government would nevertheless welcome ILO technical assistance with specific reference to job creation and training on a tripartite basis inside South Africa.

C. The Committee's conclusions

12. The Committee observes in a general manner that major political changes as well as far-reaching changes to labour relations legislation have taken place in South Africa in the period following the publication of the Fact-Finding and Conciliation Commission's report. It notes that the political changes which have occurred - including the adoption of a new Constitution by Parliament (which recognizes the right to associate, organize, bargain and strike), the establishment of a Transitional Executive Council

charged with the facilitation and promotion of the transition to a democratic order in South Africa in conjunction with all legislative and executive structures at all levels of government and the possible reincorporation into the Republic of South Africa of the so-called "national states" and "self-governing" territories - have been the result of negotiations between the major political parties and movements at the Multi-Party Negotiating Forum, whereas changes to labour relations legislation have by and large resulted from negotiations between employers, trade unions and the State in the restructured National Manpower Commission (NMC). However, both these changes are relevant to the recommendations of the Fact-Finding and Conciliation Commission, a number of which have already been given effect to while several matters still require attention.

(a) Restructuring of the National Manpower Commission

13. The Fact-Finding and Conciliation Commission considered that the Government should pursue vigorously the steps that were being taken to reactivate the National Manpower Commission (NMC), with a tripartite structure that was acceptable to all the parties concerned. It also recommended that the NMC's recommendations be given prompt and favourable attention by the Government.

14. The Committee notes with interest that the NMC has been restructured as a tripartite body and consists of representatives of employers' and workers' organizations and the Department of Manpower and of independent experts. It further notes that the NMC which has been functioning on a tripartite basis since February 1993 has, through its various working groups and subcommittees, considered all new labour relations legislation elaborated since that date before it was introduced in Parliament. Moreover, under the terms of article 33 of the new Constitution, the State will in future be bound to submit any proposed legislation concerning industrial relations or employment practices to the NMC for consideration and comments before introducing it in Parliament.

(b) Agricultural workers and domestic workers

15. The Fact-Finding and Conciliation Commission recommended that priority be given to the enactment of legislation extending to agricultural and domestic workers trade union and collective bargaining rights in common with other workers in South Africa.

16. Regarding labour legislation for farmworkers, the Committee notes that the Basic Conditions of Employment Act No. 3 of 1983, which deals with minimum terms and conditions of employment was extended to farmworkers with effect from 1 May 1993. This Act also affords protection against victimization on the grounds of, inter alia, union membership although it does not regulate collective bargaining. The Committee further notes that the Agricultural Labour Act No. 147 of 1993 (ALA) came into force for farmworkers on 17 January 1994. While section 1 of the ALA extends the Labour Relations Act No. 28 of 1956 (LRA) to farmworkers, the ALA also contains a number of provisions which apply exclusively to farmworkers, including provision for the establishment of an agricultural labour court which can act as a court of first instance in unfair labour practice disputes between farmworkers and their employers (section 2(d)).

17. The Committee notes with concern, however, that the ALA, which defines farming activities as "any activity on a farm in connection with agriculture, including stockbreeding, horticulture and forestry" (section 2(a)(iii)), declares such activities to be essential services with the result that strikes and lockouts are prohibited, unless an employer and a trade union on behalf of farmworkers working for such employer agree otherwise (section 2(f)). Failing such an agreement, unresolved disputes between farmworkers and their employers are subject to compulsory arbitration as provided for in section 46(1) of the LRA. The Committee recalls, however, that essential services are those services the interruption of which would endanger the life, personal safety or health of all or part of the population and that agricultural activities do not constitute essential services in the strict sense of the term [see Digest of decisions and principles of the Freedom of Association Committee, 3rd edition, 1985, para. 402]. It therefore considers that the Government should take steps to ensure that section 2(f) of the ALA is repealed so that the prohibition on the right to strike of farmworkers is removed.

18. The Committee further notes that while section 1 of the ALA extends the LRA to farmworkers, it also provides that any amendment to the LRA after 1 September 1993 will not apply to farming activities. The Committee is led to understand from this that in practice two versions of the LRA will apply. The LRA as it reads at present will continue to apply to farmworkers, despite the fact that the Act itself is in the process of amendment and that the amended version applicable to industry ("non-farming activities") would substantially comply with the recommendations of the Fact-Finding and Conciliation Commission if it is passed. Thus, in the Committee's view, the recommendations of the Fact-Finding and Conciliation Commission on the need to amend certain provisions of the LRA remain valid for the version of the Act which applies to farmworkers. These provisions relate, in particular, to the present system for the registration of trade unions (section 4(3)), the control of the contents of their constitutions (section 4(5)(a)(ii) and (iii), section 8(4)(a)(iv), (6)(c) and (d) and (8)), to interference of public authorities in trade union affairs (section 12(1) and (3)) and collective bargaining agreements (section 48(1), section 51(12), section 51A, section 78(IC)), and to restrictions, both substantive and procedural, on strike action (section 1(1), section 27A, section 35, section 46(1), (2) and (7), section 65(1)(d) and (2)(b), section 65(IA)). In the Committee's view, the Government should take steps to ensure that these provisions of the LRA are amended with respect to farmworkers.

19. As regards labour legislation for domestic workers, the Committee observes that the Basic Conditions of Employment Act No. 3 of 1983 was also extended to domestic workers with effect from 1 January 1994. It deeply regrets to note, however, that no legislation has been tabled to date to extend the provisions of the LRA to them. The Committee has been informed that a subcommittee of the NMC is currently dealing with the matter and in particular with the question of how far the LRA should be extended to domestic workers. In this respect, the Committee firmly believes that the Government should ensure that legislation is enacted as quickly as possible granting trade union and collective bargaining rights to domestic workers in South Africa.

(c) "Self-governing" territories and "national states"

20. The Fact-Finding and Conciliation Commission recommended that the Government should address urgently the serious problems posed by the existence

of 11 different sets of labour relations legislation in the various territories into which South Africa was divided with a view to ensuring that workers and employers throughout all of these territories enjoyed the basic rights of freedom of association and collective bargaining.

21. The Committee is aware of the fact that the reincorporation into the Republic of South Africa of the so-called "national states" (Transkei, Bophuthatswana, Ciskei and Venda) and "self-governing" territories (KwaNdebele, Kwazulu, Qua Qua, Lebowa, Gazankulu and Kangwane) is currently being negotiated by the Multi Party Negotiating Forum. However, it regrets to note that the Government has not provided any information on whether any measures are currently under way which envisage either the replacement of the legislation in the individual territories by the legislation applicable in South Africa generally or the harmonization of the labour relations legislation of South Africa and the various territories, in order to address the current serious problems posed by the existence of different sets of labour relations legislation. The Committee has, however, been informed that this matter is being examined by the Government and that proposals will be submitted to the NMC. In the Committee's view, the Government should be requested to give information on whether any measures are being envisaged along the lines mentioned above and, if so, how the Government proposes to implement such measures so as to assure uniformity of labour legislation and standards throughout the Republic of South Africa, including in the various "self-governing" territories and "national states" into which South Africa is divided with a view to ensuring that workers and employers throughout all of these territories enjoy the basic rights of freedom of association and collective bargaining.

(d) The public sector

22. The Fact-Finding and Conciliation Commission recommended that every effort should be made by all the parties concerned to resolve the outstanding issues in the negotiations concerning new legislation to govern labour relations in the public sector so that this legislation could be enacted as soon as possible. The problems specifically highlighted by the Commission in respect of this sector were the following: the prohibition on the registration of mixed public and private sector unions; the absence of protection against victimization; the absence of a right to strike for public servants not rendering essential services; the absence of adequate machinery for collective bargaining and settlement of disputes in all branches of the public service; and the absence of adequate conciliation and arbitration procedures for public servants rendering essential services.

23. First of all, the Committee notes with interest that the Public Service Labour Relations Act No. 102 of 1993 (the PSLRA), came into operation on 2 August 1993 and applies to all public servants, save for persons employed in terms of the Defence Act, Correctional Services Act (Prisons), Police Act and teachers.

24. The Committee further notes that by virtue of section 4(1) of the PSLRA, all employees except for departmental heads and officers employed by the Commission for Administration whose functions are of a policy-making or managerial nature, have the right to establish and, subject only to the rules of the organizations concerned, to join an "employee organization" of their choice or to refrain from establishing or joining any organization. Section 1(xii) of the PSLRA defines an employee organization as an organization consisting wholly or partly of state employees (emphasis added). In this

respect, the Committee observes that amendments to section 2(3)(b) and (d) of the LRA which were introduced in 1991 and which provide for the registration of trade unions with a mixed public service and private sector membership, came into force on 1 September 1993, thereby removing the prohibition on the registration of mixed public and private sector unions.

25. The issue of the absence of protection against victimization is also addressed by the PSLRA which in its section 4(7) prohibits victimization on account of trade union membership or non-membership or participation in the activities of a trade union.

26. With respect to the right to strike, all employees covered by the PSLRA, save those employed in essential services, have the right to strike by virtue of section 19(1), once prescribed conciliation procedures have been exhausted. Section 20(1) defines essential services as services the interruption of which could cause serious hardship to the whole or a part of the community or could endanger the life, safety or health of the members or some of the members of the community; the Committee considers that by referring to "serious hardship to the whole or a part of the community", this definition differs from its own definition, namely services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. It is therefore of the view that this provision should be amended accordingly. Furthermore, section 21 provides for a system of compulsory arbitration for unresolved disputes of interest arising in essential services and which cannot be resolved through collective bargaining. Disputes of right may be dealt with by the industrial court in terms of its unfair labour practice jurisdiction (section 22(5)).

27. As regards adequate machinery for collective bargaining, the Committee notes that the PSLRA establishes a two-tier structure for collective bargaining, at central (Commission for Administration) and departmental level. Whether a matter falls to be negotiated at the one or the other level depends on whether the Commission or a relevant departmental head is empowered to deal with the matter in question under the terms of section 5. The Committee notes with interest that bargaining is compulsory (section 4(12)) and that a right to information for the purposes of collective bargaining is also established (section 4(11)). Moreover, provision is made for access to the premises and facilities of a state department with the prior approval of the head of the department (section 4(10)). Provision is further made for the registration and recognition of trade unions by virtue of sections 11 and 17, respectively.

28. Finally, the Committee notes that while the PSLRA does not apply to teachers, this category of public servants is either already covered by recently enacted legislation or is to be included under the LRA through proposed amendments to the latter. In this connection, the Committee observes that a distinction was made between persons who teach at universities and technikons, and those who teach at a school, technical college or teachers' training college. Although the former are currently still excluded from the LRA, section 2 of the Labour Relations Amendment Bill extends the ambit of the LRA to include teachers at universities and technikons.

29. Moreover, trade union and collective bargaining rights for teachers in the second category are now provided for in the Education Labour Relations Act No. 146 of 1993 (ELRA) which came into force in October 1993. The Committee notes that section 5(1)(a) of the ELRA grants the right to employees falling within its ambit freely to establish or, subject to the rules of the organization concerned, to join a trade union consisting mainly of such employees or to refrain from doing so. Thus, it would appear that teachers from a school, technical college or teachers' training college may only join

trade unions which consist mainly of the same category of workers. However, since there does not appear to be any restriction in the ELRA on these organizations of teachers from freely joining a trade union federation (section 1(vi) defines an employee organization to include a federation of employee organizations), the Committee does not consider this provision to be incompatible with freedom of association principles. In addition, the ELRA establishes the right to bargain (section 5(1)(b)), and provision is made for centralized collective bargaining between sufficiently representative trade unions and employer organizations (section 6 and sections 8-14). Furthermore, the right to strike which was previously denied to this category of workers is now provided for by section 15 of the ELRA.

(e) Amendments to the Labour Relations Act No. 28 of 1956

30. The Fact-Finding and Conciliation Commission recommended that the process of revision and consolidation of the Labour Relations Act (LRA) should be pursued vigorously, with two major objectives: to simplify the LRA and structure it in such a way so as to make it more readily usable and understandable; and to ensure the LRA's conformity with international principles on freedom of association. In order to reach the latter objective, the Commission stressed the need to amend a number of the LRA's provisions which related in particular to: (i) the system for the registration of trade unions; (ii) control of the contents of their constitutions; (iii) interference of public authorities in trade union affairs; (iv) interference of public authorities in collective bargaining agreements; and (v) substantive and procedural restrictions on stike action.

31. The Committee notes the Government's statement that the NMC is considering the simplification of the LRA and has published for comment draft legislation to be considered by Parliament soon. The Committee has been informed since then that a bill has been presented to Parliament in December 1993. Requests have been made for comments on the bill. The bill has not yet been discussed in Parliament. The Committee considers that the Government should be requested to provide information on any progress being made in regard to the process of revision and consolidation of the LRA.

(i) The system for the registration of trade unions

32. The Committee notes that under the LRA a trade union is registered in respect of specific interests and for a specific area. It will be so registered if the Registrar is satisfied that it is "sufficiently representative" of those interests in that area. However, if an existing registered union lodges an objection and the Registrar is satisfied that that union is sufficiently representative of the interests and also in the area applied for, he may, under the so-called "knockout provision" (section 4(3)), refuse to register the applicant union. The Committee recalls the principle that a provision authorizing the refusal of an application for registration if another union, already registered, is sufficiently representative of the interests which the union seeking registration proposes to defend, means that, in certain cases, workers may be denied the right to join the organizations of their choice, contrary to the principles of freedom of association [see Digest, op. cit., para. 231]. The Committee notes that the Labour Relations Amendment Bill (hereinafter LRA bill) does not address section 4(3) of the LRA. The Government should therefore take steps to ensure that this provision is amended to take account of the principle enunciated above.

(ii) Control of the contents of trade union constitutions

33. The Committee notes that section 8(4)(a)(iv) of the LRA envisages that a trade union constitution may provide for "any other matter which in the opinion of the Registrar is suitable to be dealt with in the constitution of a trade union ....." (emphasis added). The Committee considers that this section is too widely expressed and gives the Registrar an unfettered discretion to allow or disallow a particular provision in a trade union constitution. It notes with satisfaction, however, that section 7(a) of the LRA bill deletes the phrase "in the opinion of the Registrar", thereby removing his discretion in regard to the other matters which may be dealt with in a trade union constitution.

34. In addition, section 4(5)(a)(ii) of the LRA disallows registration of a trade union whose constitution contains provisions which "are contrary to the provisions of any law or are calculated to hinder the attainment of the objects of any law or are unreasonable in relation to the members of the public" (emphasis added). The Committee considers that the generality of the section leaves open the risk of administrative interference in the content of a trade union's constitution, and therefore notes with satisfaction that section 6 of the LRA bill deletes the phrase "or are unreasonable in relation to the members of the public".

35. The Committee further notes that section 4(5)(a)(iii) of the LRA prohibits the registration of a trade union affiliated to any political party. Moreover, sections 8(6)(c) and (d) and (8) prohibit a trade union from affiliating with a political party and from providing funds or carrying on any other activities with the object of assisting a political party or any candidates for election to office in a political party or legislative body. In this respect, the Committee would emphasize that a general prohibition on trade unions from engaging in any political activities would not only be incompatible with the principles of freedom of association but also unrealistic in practice since trade union organizations may wish, for example, to express publicly their opinion regarding the government's economic and social policy [see Digest, op. cit., para. 356]. It therefore notes with satisfaction that section 6 of the LRA bill removes the prohibition on the registration of a trade union affiliated to any political party while section 7 of the LRA bill deletes section 8(6)(c) and (d) and amends section 8(8) of the LRA with the effect that trade unions will be allowed freely to affiliate with a political party, to provide funds or carry on any other activities with the object of assisting a political party or any candidates for election to office in a political party or legislative body.

(iii) Interference of public authorities in trade union affairs

36. The Committee notes that section 12(1) of the LRA empowers the Registrar to investigate a union for the benefit of its members when it has become inactive. Section 12(3) gives him wide-ranging powers to conduct an inquiry into the internal affairs of a trade union if he has reason to believe that any material irregularity has occurred in connection with an election, or that the union or any of its officers or organs has failed to observe the constitution or "has acted unlawfully or has acted in a manner which is unreasonable in relation to the members and which has caused serious dissatisfaction amongst a substantial number of members in good standing". If, following his inquiry, the Registrar is satisfied that an irregularity has occurred, he may recommend to the Minister what action he considers should be taken. The Minister may, after giving the union concerned an opportunity to

make representations, order the holding of new elections or any other action recommended by the Registrar. There is no right of appeal against the Minister's decision.

37. The Committee is of the view that sections 12(1) and 12(3) of the LRA leave a considerable degree of discretion to the Registrar to investigate the internal affairs of a union, which could result in undue interference. The Committee would recall that while the principles of freedom of association do not prevent the control of the internal acts of a trade union if those internal acts violate legal provisions or rules, it is important that this control be exercised by the judicial authorities, not only to ensure the right of defence (which normal judicial procedure alone can guarantee), but also to avoid the risk that measures taken by the administrative authorities may appear to be arbitrary [see Digest, op. cit., para 452]. The Committee notes in this respect that while the LRA bill does not circumscribe the powers of the Registrar, it creates a right of appeal to the Minister against any instruction by the Registrar in terms of section 12(1) of the LRA as well as a further right of appeal to the Supreme Court against the Minister's decision (section 10 of the LRA bill, amending section 16(1) of the LRA). A right to appeal to the Supreme Court against a decision by the Minister taken in terms of section 12(3) of the LRA is also created (section 10 of the LRA bill, amending section 16(5)(a) of the LRA). The Committee considers that the above provision for a right of appeal to the Minister of Manpower and thereafter to the Supreme Court against any instruction by the Industrial Registrar issued after an inquiry into the affairs of a trade union constitutes an adequate safeguard against possible interference by the administrative authorities in trade union affairs.

(iv) Interference of public authorities in collective agreements

38. The Committee notes that section 48(1) of the LRA gives the Minister a discretion to promulgate or not to promulgate agreements freely concluded in industrial councils. In this respect, the Committee recalls the principle that the right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association, and trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent, and the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof [see Digest, op. cit., para. 583]. The Committee regrets to note that the LRA bill does not propose any amendment to section 48(1) of the LRA. It considers that the Government should take steps to ensure that this provision is amended in line with the principle enunciated above.

39. Similarly, the Committee regrets to note that the LRA bill does not propose any amendment to section 51(12) of the LRA which empowers the Minister to exempt or exclude certain areas or classes of work from any industrial council agreement, or parts thereof, nor to section 51A of the LRA which allows him to promulgate proposals on employment conditions coming from the employers' side alone in areas where there is no industrial council operating. In this respect, the Committee recalls the importance of the principle of the autonomy of the parties to the collective bargaining process from which it follows that the public authorities should not, as a rule, intervene in order to modify the contents of collective agreements which have been freely concluded [see Digest, op. cit., para. 593]. Moreover, if employers can impose their choice of conditions of employment in an area where there is no industrial council operating, collective bargaining is

jeopardized. The Committee therefore believes that the Government should take steps to ensure that sections 51(12) and 51A of the LRA are amended in conformity with freedom of association principles.

40. With regard to section 78(IC) of the LRA which provides that employers may not enter into stop-order arrangements with unregistered unions without the approval of the Minister, the Committee considers the requirement of ministerial approval to constitute an unwarranted interference in collective bargaining. It notes with interest that section 28(a) of the LRA bill deletes section 78(IC) from the LRA.

(v) Restrictions on strike action

41. First of all, the Committee has been informed in this respect that the Transitional Executive Council has adopted a Bill of Rights which recognizes the right to strike. However, it would be appropriate to examine the relevant provisions of the LRA.

- Procedural restrictions

42. In the Committee's view, the complicated nature of the various pre-strike requirements set out in sections 27A, 35 and 65(2)(b) of the LRA have a negative effect on the exercise of the right to strike. However, it notes that sections 14 and 16 of the LRA bill introduce amendments to sections 27A and 35, respectively, of the LRA which will have the effect of: removing the requirements that a trade union which refers a dispute to an industrial council or conciliation board must submit certain prescribed certificates; allowing unregistered unions to refer disputes to industrial councils and also to assist any individual in doing so; and simplifying the procedural requirements which have to be met for the referral of disputes to industrial councils and conciliation boards. The Committee considers that these amendments could simplify the procedural requirements for a strike to be legal under the LRA. However, it would be appropriate to examine the effectiveness of these amendments once they are implemented.

43. The Committee observes, however, that the LRA bill does not introduce any amendments to section 65(2)(b) of the LRA, which requires an affirmative vote of all union members in an undertaking affected by proposed strike action. In this connection, the Committee recalls the principle that the requirement that an absolute majority of workers should be obtained for the calling of a strike may be difficult, especially in the case of unions which group together a larger number of members. A provision requiring an absolute majority may, therefore, involve the risk of seriously limiting the right to strike [see Digest, op. cit., para. 380]. It considers that steps should be taken by the Government to ensure that section 65(2)(b) of the LRA relating to the question of strike ballots is amended so as to bring procedural requirements to render a strike lawful under the LRA into conformity with freedom of association principles.

- Substantive restrictions

44. Furthermore, the LRA bill does not introduce any amendments to sections 1(1) and 65(1A) of the LRA which limit the right to strike to shop-floor issues. The Committee recalls that the right to strike should not be limited solely to industrial disputes that are likely to be solved by the signing of a collective agreement; workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as

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regards economic and social matters affecting their interests [see Digest, op. cit., para. 388]. The Committee accordingly considers that steps should be taken by the Government to ensure that sections 1(1) and 65(1A) of the LRA are amended so as to safeguard the legality of strikes over social and economic issues affecting workers' and trade union rights.

45. The Committee further notes that certain services contained in section 46 of the LRA where compulsory arbitration is substituted for strike action are not essential in the strict sense of the term. In particular, this is the case for the following: local authorities except when they provide essential services in the strict sense of the term, passenger transportation, the handling of perishable foodstuffs and petrol or other fuels for use by public utilities [see Digest, op. cit., para. 402]. Moreover, the Committee regrets to note that section 19(c) of the LRA bill extends the category of essential service workers to include persons working for an employer providing air traffic and navigation services. Therefore, the Government should take steps to ensure that: section 46 of the LRA is amended so that the prohibition of the right to strike is limited to those services which are essential in the strict sense of the term; and section 19(c) of the LRA bill which extends the category of essential service workers to include persons working for an employer providing air traffic and navigation services is deleted.

46. Finally, the Committee notes that those workers engaged in a lawful strike under the LRA receive immunity against criminal prosecution and civil claims but may nevertheless be dismissed. The Committee observes that the LRA bill does not introduce any amendment in this regard, but is of the view that the unfair labour practice provisions of the LRA should be amended so as to provide appropriate protection against dismissal of strikers engaged in a legal strike and of strikers where the strike, although technically illegal, was in all other respects legitimately called for the promotion and defence of workers' economic and social interests. In this connection, the Committee would emphasize that the use of extremely serious measures, such as dismissal of workers for having participated in a strike and refusal to re-employ them, implies a serious risk of abuse and constitutes a violation of freedom of association [see Digest, op. cit., para. 444].

47. In addition, the Committee notes that criminal sanctions for participation in illegal strikes remain in force. Under section 82(1)(d) of the LRA, such action in breach of the LRA is punishable by a fine of up to Rand 1,000 or one year's imprisonment or both. The Committee shares the view of the Committee of Experts that such sanctions should be imposed only where there have been violations of strike prohibitions which are themselves in conformity with the principles of freedom of association [see General Survey on Freedom of Association and Collective Bargaining, 1983, para. 223]. Since it is clear from the Committee's preceding conclusions that several of the strike prohibitions contained in the LRA are not in conformity with freedom of association principles, the provisions of the LRA imposing criminal sanctions for violations of strike prohibitions which are not in conformity with the principles of freedom of association should be repealed.

(f) Racial restrictions on trade union membership

48. The Fact-Finding and Conciliation Commission recommended that a situation should be achieved as rapidly as possible where no trade union or employers' organization limits its membership by reference to race. It recommended that a special officer should be appointed to facilitate, within a

given time, the removal of all provisions whereby membership of such organizations, or the holding of office in them, is confined to persons of a particular race.

49. In the absence of any information from the Government in respect of the above recommendation, the Committee is unable to comment on the position at present. The Government should be invited to indicate: (i) whether any applications for the registration of trade unions which limit their membership on the basis of race have been received since the report of the Fact-Finding and Conciliation Commission and what the results of such applications, if any, have been; and (ii) whether interim measures such as those recommended by the Commission regarding the removal from the constitutions of trade unions of provisions which limit their membership on the basis of race have been implemented.

(g) The right of trade unions to function freely

50. The Fact-Finding and Conciliation Commission recommended that security or other legislation which had been used in the past to restrict the right of trade unions to carry on their activities in full freedom should be reformed. More specifically, the Commission recommended that the Fund Raising Act, the Affected Organizations Act and the Disclosure of Foreign Funding Act should be repealed or amended in such a way that they cannot be used so as to interfere with the right of trade unions to administer their financial affairs without undue interference from the public authorities. It also concluded that the Internal Security Act, Publications Act and Public Safety Act have in the past been used and could still be used to: prevent trade unions from holding public meetings for trade union purposes; restrict the publication and distribution of news and information of general or special interest to trade unions and their members; and to restrict the legitimate activities of trade unions during a state of emergency. It recommended that these Acts should be reformed.

51. The Committee notes that the following bills have introduced a number of amendments to the above-mentioned Acts:

- the Abolition of Restrictions on Free Political Activity bill, which (i) amends the Publications Act by deleting the provisions referred to in paragraph 288 of the report of the Commission (namely, section 47(2)(c), (d) and (e) of the Publications Act); and (ii) amends the Internal Security Act by restricting the powers of the relevant Minister to declare organizations unlawful. Section 4(1) of the Internal Security Act currently allows the Minister to prohibit organizations which promote violence, rioting, disturbance or disorder and authorizes the detention without trial of persons engaged in such acts. Section 2 of the bill deletes the reference to "disturbance or disorder" with the result that the Minister will only be able to act against organizations or individuals who promote violence or rioting. Section 2 of the bill in any event determines that the Minister may only act on the advice of the Transitional Executive Council. (iii) Section 7 of the bill also proposes the repeal of the Affected Organizations Act and Disclosure of Foreign Funding Act;

- the Regulation of Gatherings bill (section 14(2)) proposes the repeal of sections 46(1) and (2) of the Internal Security Act which impose restrictions on freeom of assembly. The bill acknowledges the right of peaceful assembly and lays down guidelines in that regard;

- both the new Constitution and the Transitional Executive Council Act deal with the declaration of states of emergency. The former lays down the conditions under which a state of emergency may be declared and contains a number of safeguards (article 34). The Transitional Executive Council Act stipulates that the State President may use his powers to declare a state of emergency only after consultation with the TEC, who may also review a declaration and direct the State President to withdraw it (section 2(b)).

52. Thus, the Committee notes with satisfaction that substantial progress has been made in the reform of security and related legislation so as to allow trade unions to administer their financial affairs and to carry out legitimate trade union activities without undue interference from the public authorities.

(h) Attacks on trade unionists and trade union property

53. The Fact-Finding and Conciliation Commission recommended that a suitable means should be found under South African law so that outstanding cases of unresolved violence against trade unions and their members may be reopened. It also considered that it was essential that every effort should be made to bring to justice those responsible for acts of violence against trade unionists or trade union property.

54. The Committee regrets to note that the Government has provided no information on the measures taken in respect of the above recommendation, especially in the light of the fact that the Government itself had acknowledged to the Fact-Finding and Conciliation Commission that the violence required attention. The Committee is of the same view given that evidence before the Commission indicated that more than 70 attacks on trade unionists and trade union premises occurred between 1986 and 1992. In this regard, the Government should be asked to indicate whether any further attacks have been reported since the publication of the Commission's report and whether any persons have been brought to justice for violence against trade unionists or trade union property.

(i) Government interference in trade union activities

55. The Fact-Finding and Conciliation Commission recommended that every possible step should be taken to prevent the recurrence of spying and other covert activities against trade unionists on the part of any agency of the Government. It further recommended that practical measures to this end, such as the establishment of trade union-police liaison committees and police education on trade union functions and rights should be instituted without delay.

56. The Committee again notes the absence of information from the Government regarding the action taken in respect of the above recommendation. The Government should be requested to provide detailed information on the practical measures that have been taken to ensure that the Government's commitment to refrain from interference in the activities of trade unions and their members is respected by all public agencies.

(j) Employer restrictions on access to premises

57. The Fact-Finding and Conciliation Commission concluded that employer restrictions on access to prmises related specifically to the situation as it affected farmworkers, domestic workers and the mining industry, i.e. industries where workers both lived and worked on their employers' premises. The Commission recommended that the protection provided under the LRA - under the unfair labour practice jurisdiction - should be extended to farmworkers and domestic workers. In relation to the situation in the mining industry, the Commission recommended that remedies should be found which take into account the special difficulties which had arisen historically over access to mine workers by reason of the mine compound system.

58. The Committee notes the Government's statement that the Department of Manpower is of the opinion that the problems arising from access to premises should be discussed by the interested parties themselves. The Committee observes, however, that while the Agricultural Labour Act (ALA) extends the provisions of the LRA - including the industrial court's unfair labour practice jurisdiction - to farmworkers, no provision has been made in the ALA itself for rights of access. Furthermore, under the terms of the Trespass Act No. 6 of 1959 which still remains applicable, any person entering land without the permission of the owner or lawful occupier, unless it is for a lawful reason, commits a criminal offence. As noted earlier on in the Committee's conclusions, domestic workers are still excluded from the LRA. As regards the mining industry, the Committee notes that workers in this industry are covered by the LRA. It nevertheless notes that evidence presented before the Fact-Finding and Conciliation Commission indicated that the restrictions on access to premises arose pursuant to agreements entered into by the trade union representing mine workers with mine employers (emphasis added). The restrictions appeared in practice to have been imposed by individual mine managements and had affected a large number of matters relating, among other things, to the recruitment of members, the holding of meetings and the use of mine premises for union business.

59. Thus, in view of the absence of statutory rights of access under the LRA, the provisions of the Trespass Act and the difficulties which have arisen over access to mine workers by reason of the mine compound system, the Committee is of the opinion that access by trade unions to workers who are both employed and housed on their employers' premises remains problematic and is an issue which is not likely to be resolved by the interested parties themselves. In this connection, the Committee recalls the principle that workers' representatives should enjoy such facilities as may be necessary for the proper exercise of their functions, including the right of access to workplaces [see Digest, op. cit., para. 143]. In view of the fact that farmworkers, domestic workers and workers in the mining industry are both employed and housed on their employers' premises and given the absence of statutory rights of access under the LRA, the Committee considers that the Government should take the necessary measures to ensure that access is granted freely to workers in these sectors by trade unions and their officials for the purpose of carrying out normal union activities although on the premises of employers, in conformity with freedom of association principles.

The Committee's recommendations

60. In the light of its foregoing conclusions, the Committee invites the Governing Body to approve the following recommendations:

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(a) The Committee notes with interest that the Government has taken measures to give effect to a number of the recommendations of the Fact-Finding and Conciliation Commission on the following points:

(i) the National Manpower Commission (NMC) has been restructured as a tripartite body and has been functioning as such since February 1993. Moreover, the State will in future be bound to submit any proposed legislation concerning industrial relations or employment practices to the NMC for consideration and comment before introducing it in Parliament;

(ii) the Basic Conditions of Employment Act No. 3 of 1983 has been extended to farmworkers and domestic workers;

(iii) the Public Service Labour Relations Act No. 102 of 1993 (PSLRA) - which applies to all public servnats except for persons employed in terms of the Defence Act, Correctional Services Act (Prisons), Police Act and teachers - addresses the problems identified by the Fact-Finding and Conciliation Commission in respect of this sector in that it regulates the right to strike, extends protection against anti-union discrimination, and introduces a system for the negotiation and determination of terms and conditions of employment of employees in the various branches of the public service;

(iv) the Labour Relations Amendment bill extends the ambit of the Labour Relations Act to include teachers at universities and technikons, while the Education Labour Relations Act No. 146 of 1993 now grants trade union and collective bargaining rights to teachers who teach at a school, technical college or teachers' training college;

(v) as regards the provisions of the Labour Relations Act (LRA) on the control of the contents of trade union constitutions, sections 7(a) and 6 of the LRA bill amend sections 8(4)(a)(iv) and 4(5)(a)(ii), respectively, of the LRA, thereby removing the risk of administrative interference in the content of a trade union's constitution; section 6 of the LRA bill amends section 4(5)(a)(iii) of the LRA to remove the prohibition on the registration of a trade union affiliated to any political party; and section 7 of the LRA bill deletes section 8(6)(c) and (d) and amends section 8(8) of the LRA with the effect that trade unions will be allowed freely to affiliate with a political party, to provide funds or carry on any other activities with the object of assisting a political party or any candidates for election to office in a political party or legislative body;

(vi) as regards the interference of public authorities in trade union affairs, the provision contained in the LRA bill for a right of appeal to the Minister of Manpower and thereafter to the Supreme Court against any instruction by the Industrial Registrar issued after an inquiry into the affairs of a trade union constitutes an adequate safeguard against possible interference by the administrative authorities in trade union affairs;

(vii) the LRA bill deletes section 78(IC) of the LRA, which requires ministerial approval in order for employers to enter into stop-order arrangements with unregistered unions;

(viii) substantial progress has been made in the reform of security and related legislation so as to allow trade unions to administer their financial affairs and to carry out legitimnate trade union activities without undue interference from the public authorities;

(ix) a Bill of Rights recognizing the right to strike has been adopted by the Transitional Executive Council.

(b) However, effect has not been given to a number of the recommendations of the Fact-Finding and Conciliation Commission in the following areas:

(i) the Government should take steps to ensure that section 2(f) of the Agricultural Labour Act No. 147 of 1993 is repealed so that the prohibition on the right to strike of farmworkers is removed. Noting that any amendment to the Labour Relations Act No. 28 of 1956 after 1 September 1993 will not apply to farming activities, the Committee is of the view that the recommendations of the Fact-Finding and Conciliation Commission on the need to amend certain provisions of the Labour Relations Act remain valid for the version of the Act which applies to farmworkers. The provisions in question, which are enumerated in paragraph 18 of the Committee's conclusions, should therefore be amended;

(ii) legislation should be enacted as quickly as possible to grant trade union and collective bargaining rights to domestic workers in South Africa;

(iii) section 4(3) of the LRA which entitles the Registrar to refuse to register trade unions which cannot satisfy him that they are "sufficiently representative" should be amended to take account of the principle according to which a provision authorizing the refusal of an application for registration if another union, already registered, is sufficiently representative of the interests which the union seeking registration proposes to defend, means that, in certain cases, workers may be denied the right to join the organizations of their choice, contrary to the principles of freedom of association;

(iv) as regards interference of public authorities in collective agreements, the Government should take steps to ensure that sections 48(1), 51(12) and 51A of the LRA are amended, in line with freedom of association principles;

(v) the Government should take steps to ensure that section 65(2)(b) of the LRA is amended in order to conform to the principle that the requirement that an absolute majority of workers should be obtained for the calling of a strike may be difficult, especially in the case of unions which group together a larger number of members, and that a provision requiring an absolute majority may therefore involve the risk of seriously limiting the right to strike;

(vi) as regards substantive restrictions on strike action, the Government should take steps to ensure that: (1) sections 1(1) and 65(1A) of the LRA are amended so as to safeguard the legality of strikes over social and economic issues affecting workers' and trade union rights; (2) section 20(1) of the PSLRA is amended to bring it into conformity with the notion of essential services in the strict sense of the term as defined by the Committee; (3) section 46 of the LRA is amended so that the prohibition of the right to strike is limited to those services which are essential in the strict sense of the

term; (4) section 19(c) of the LRA bill which extends the category of essential service workers to include persons working for an employer providing air traffic and navigation services is deleted; (5) the unfair labour practice provisions of the LRA are amended to provide appropriate protection against dismissal of strikers engaged in a legal strike and of strikers where the strike, although technically illegal, was in all other respects legitimately called for the promotion and defence of workers' economic and social interests; and (6) the provisions of the LRA imposing criminal sanctions for violations of strike prohibitions which are not in conformity with freedom of association principles are repealed;

(vii) the Government should take the necessary measures to ensure that access is granted freely to farmworkers, domestic workers and workers in the mining industry by trade unions and their officials for the purpose of carrying out normal union activities although on the premises of employers.

(c) The Committee considers that the Government should, moreover, provide information on the following points:

(i) the Government should provide information on whether any measures concerning the replacement or the harmonization of the legislation in the various "self-governing" territories and "national states" are being envisaged and, if so, how the Government proposes to implement them so as to assure uniformity of labour legislation and standards in the various territories into which South Africa is currently divided;

(ii) the Government should provide information on any progress being made in regard to the process of revision and consolidation of the Labour Relations Act (LRA);

(iii) the Government should indicate: (i) whether any applications for the registration of trade unions which limit their membership on the basis of race have been received since the report of the Fact-Finding and Conciliation Commission and what the results of such applications, if any, have been; and (ii) whether interim measures such as those recommended by the Commission regarding the removal from the constitutions of trade unions of provisions which limit their membership on the basis of race have been implemented;

(iv) the Government should indicate whether any further attacks on trade unionists and trade union premises have been reported since the publication of the report of the Fact-Finding and Conciliation Commission, and whether any persons have been brought to justice for violence against trade unionists or trade union property;

(v) the Government should provide detailed information on the practical measures that have been taken - such as the establishment of trade union-police liaison committees and police education on trade union functions and rights - to ensure that the Government's commitment to refrain from interference in the activities of trade unions and their members is respected by all public agencies.

(d) The Committee notes that while measures have been taken to give effect to a number of the Fact-Finding and Conciliation Commission's recommendations, a number of them have not as yet been implemented. It therefore recommends that the Government of South Africa be invited, through the Economic and Social Council as appropriate, to continue

submitting reports on the measures taken to give effect to the Commission's recommendations, that ECOSOC transmit such reports to the Director-General of the ILO and that he provide any advice and comments which ECOSOC might wish to have on them.

Geneva, 25 March 1994.

Jean-Jacques Oechslin,
Chairman.

POINT FOR DECISION:

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ECONOMIC AND ENVIRONMENTAL QUESTIONS: REPORTS OF SUBSIDIARY BODIES, CONFERENCES AND RELATED QUESTIONS

Cooperation in fisheries in Africa

Note by the Secretary-General

In its resolution 1992/54 of 31 July 1992, the Economic and Social Council requested the Secretary-General to submit to it, at its substantive session of 1994, a report of the Director-General of the Food and Agriculture Organization of the United Nations (FAO), working in cooperation with the other relevant organizations and in close consultation with the Acting Chairman of the Ministerial Conference on Cooperation in Fisheries among the African States Bordering the Atlantic Ocean, on the progress achieved in the implementation of the resolution and on the outcome of the third session of the Conference, which was to be held in Cape Verde in 1993. The report of the Director-General of FAO is annexed to the present note.

* E/1994/100.

Annex

REPORT OF THE DIRECTOR-GENERAL OF THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS ON THE ACTIVITIES OF THE MINISTERIAL CONFERENCE ON COOPERATION IN FISHERIES AMONG THE AFRICAN STATES BORDERING THE ATLANTIC OCEAN

1. This report has been prepared by the Director-General of the Food and Agriculture Organization of the United Nations (FAO) in consultation with the Chairman of the Ministerial Conference on Cooperation in Fisheries among the African States Bordering the Atlantic Ocean (hereafter referred to as the Ministerial Conference) in pursuance of Economic and Social Council resolution 1992/54 of 31 July 1992 entitled "Cooperation in fisheries in Africa". It supplements the report of the Director-General made available to the Economic and Social Council at its substantive session of 1993 on this same subject.

2. In its resolution 1992/54, the Council welcomed the progress achieved in implementing the cooperation programmes of the Ministerial Conference and invited the Conference to intensify its activities with a view to ensuring the sustainable development of fishery resources, in particular through the adoption of effective norms in the areas of fisheries planning and management, statistics, marine scientific research and for the continued monitoring and protection of marine resources in the region. The Council also reiterated its appeal to the international community, the organizations of the United Nations system, donor countries and regional financial institutions to contribute generously to the implementation of the Conference programmes and projects. The Director-General of FAO was to prepare a report on the progress achieved in the implementation of the resolution and on the outcome of the third session of the Ministerial Conference, which was to be held in Cape Verde in 1993.

3. However, the third session of the Ministerial Conference was postponed and is now scheduled to be held in Praia, Cape Verde, before the end of 1994. The Director-General of FAO stands ready to report on the outcome of that session to the Economic and Social Council at its substantive session of 1995.

4. The first session of the Ministerial Conference was convened in 1989 in Rabat at the invitation of the Government of Morocco. The Conference adopted the Rabat Declaration, in which all African States bordering the Atlantic Ocean expressed their common will to strengthen and develop cooperation in fisheries matters. The Conference also set up a follow-up committee, composed of a limited number of States, to monitor activities during the intersessional periods. The first session of the Follow-up Committee was held in Rabat in May 1990.

5. At its second session, held in Dakar in July 1991, the Ministerial Conference adopted the Regional Convention on Fisheries Cooperation among the African States Bordering the Atlantic Ocean. The Director-General of FAO is depositary of the Convention. The Convention will enter into force with the deposit of the seventh instrument of ratification, acceptance, approval or accession. The Convention has been signed by the Governments of Cameroon,

Cape Verde, Congo, the Gambia, Guinea, Mauritania, Morocco, Senegal, Togo and Zaire. At present, it has been ratified by the Governments of Guinea and Senegal; the Governments of Equatorial Guinea and Sierra Leone have deposited their instrument of accession with the Director-General.

6. In its resolution 1991/73, the Economic and Social Council took note with satisfaction of the convening of the Conference and welcomed the adoption of the Convention. In response to a request from the Chairman of the Ministerial Conference that FAO provide interim support, pending the establishment of a permanent secretariat, the Director-General of FAO approved the funding of a project (TCP/RAF/2253) for this purpose. The project became operational in May 1992. A major activity of the project was the organization of a legal and institutional workshop in Praia, Cape Verde in July 1993, which examined issues relating to different options for the establishment of the permanent secretariat. The report of the workshop will be presented to the Conference of Ministers for decision at the third session.

7. Another major activity was the organization by FAO, with funding from the FAO/Norway/Cooperative Programme, of a regional workshop on fisheries monitoring, control and surveillance for African States bordering the Atlantic Ocean in Accra, Ghana in November 1992. This was in response to resolution CONF/1/91 adopted at the second session of the Conference regarding assistance for combating illegal fishing in the region. The Follow-up Committee, at its second session (Dakar, December 1992) endorsed the recommendations of the workshop.

8. A workshop to formulate guidelines on how to develop a regional maritime database (BDRM) to meet the requirements of the member States, was organized in Dakar in February 1993 with support from the European Community (EC) and FAO project TCP/RAF/2253. Based on the conclusions and recommendations of the workshop, the BDRM Programme was formulated and submitted to the EC, which has expressed, in principle, an interest in funding it. The Programme comprises the following three components: (i) development of the Geographical Information System and related training of national staff, to be executed by FAO; (ii) development of the user-interface, to be executed by the University of Warwick (United Kingdom); (iii) training in fishery resources evaluation, to be executed by the International Centre for Living Aquatic Resources Management.

9. The Regional Fishery Law Advisory Programme, formulated by FAO and endorsed by the Follow-up Committee at its second session, provides advice to the Ministerial Conference, subregional bodies and individual countries of the region on the legal aspects of fisheries cooperation, management and development. The Programme (GCP/RAF/302/EEC, financed by the EC and executed by FAO, was approved for a period of three years. The Programme is based in Dakar and has been operational since May 1994. It is also supported by two bilateral donors through the financing of posts for associate professional officers supporting the project.

10. The progress achieved with regard to other project proposals formulated, inter alia, by the United Nations Industrial Development Organization (UNIDO), FAO and other organizations of the United Nations system, and proposals which are still under consideration by the United Nations Development Programme (UNDP), the Canadian International Development Agency (CIDA) and other donors, will be reviewed during the third session of the Ministerial Conference in the latter part of 1994.